NO. 49039-1

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

ELIJAH ISAIAH COFIELD AND DEREK M. JETER, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Susan Serko, Judge

No. 14-8-00425-4, 12-8-01124-6

BRIEF OF RESPONDENT

MARK LINDQUIST
Prosecuting Attorney

By
JASON RUYF
Deputy Prosecuting Attorney
WSB # 38725

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

Table of Contents

Table of Authorities

State Cases

Federal and Other Jurisdictions

Statutes

Rules and Regulations

Other Authorities

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the trial court rightly refuse to set a redundant hearing to readdress conceded ineligibility of appellants' juvenile records for administrative sealing as RCW 13.50.260(1)(a) reserves the second hearing demanded to decide if records eligible for administrative sealing should remain open?

2. Are the requests for appellate-cost waivers premature since a cost bill has not been submitted?

B. STATEMENT OF THE CASE.

E.C.'s case began with him burglarizing the Goodfellas Barbershop in Tacoma. ECP 64.[1] An employee arrived to find its window broken, drawers open, and cabinets ransacked. *Id.* E.C.'s fingerprints were found on the broken window. *Id.* Fingerprints likewise revealed his role in an attempted burglary at Johnson's Candy Company. *Id.* A window was smashed, but remained intact. *Id.* E.C. was charged with second degree burglary for breaking into Goodfellas and attempted second degree burglary for trying to break into Johnson's. ECP 62.

Those crimes were consolidated below with 9 others he committed. ECP 8. The State filed an Amended Information purposed to enable his entry of a deferred disposition. ECP 1. He pleaded guilty to 5 second degree

[1] ECP above ECP 62 reflect an estimate of supplemental designations.

burglaries and 2 attempted second degree burglaries for breaking into 5 businesses and attempting to break into 2 others with intent to steal. ECP 14. He entered an ***Alford*** plea[2] to a second degree theft. ECP 66. A deferred disposition was granted March 26, 2013. ECP 6.

Several conditions were imposed, including apology letters to the targeted businesses: Goodfellas, Johnsons, Frisco Freeze, Drive & Send, Todays Uniform, Southern Kitchen, Bean & Juice Joint, Silk Thai, Vanity Fashion, Clips Masters and Starbucks. ECP 8. An order setting restitution at $2,759.14 was entered. ECP 72. With counsel, E.C. was informed of the consequences for failing to complete his conditions. ECP 9. He initialed the advice on sealing attached to his disposition order. ECP 11.

A warrant issued because he failed to appear at a review on March 25, 2014. ECP 74. The hearing was continued to March 23, 2015. ECP 76. In the interim, he stipulated to truancy and marijuana use. ECP 78. His deferred disposition was revoked because he committed another burglary and possessed a drug with intent to deliver. ECP 14. The administrative sealing hearing was set for March 25, 2016, at 9:00AM in JCD1. ECP16. E.C. signed that order. *Id.* All he had to do to ensure sealing was pay restitution, a victim assessment and a DNA fee. ECP 20. His ability to seek modification of restitution was explained. ECP 20. A second-initialed advisement of sealing rights was attached to the order. ECP 21.

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[2] ***North Carolina v. Alford***, 400 U.S. 25, 91 S.Ct. 160 (1970).

Counsel appeared on E.C.'s behalf at the hearing for administrative sealing. ECP 27. The commissioner found E.C.'s record was ineligible to be sealed as restitution had not been paid. ECP 27. E.C. does not dispute the accuracy of that finding. E.C.'s motion for a contested sealing hearing was denied. ECP 26. He moved for revision of the decision not to set a redundant hearing, arguing RCW 13.50.260(1)(a) requires it regardless of whether he has any proof of eligibility to present. ECP 26. The Honorable Susan K. Serko rejected that interpretation of the statute at a hearing in which D.J. made the same claim. Judge Serko's ruling will be addressed after D.J.'s path to that hearing is briefly explained.

D.J. broke into a home to steal with friends. DCP 66.[3] He jumped the victims' fence, entered their window, and stole their property. *Id.* Neighbors watched him move property from the house to a car. *Id.* Over twenty bottles of alcohol and a case of poker chips were taken. *Id.* D.J. was charged with burglary. *Id.* The intrusion's impact far exceeded the material loss. *Id.* Both victims "fe[lt] violated." *Id.* The female victim was so scared she wanted her husband to keep a pistol ready for protection. *Id.* For them: "The worst part [] is [] there was no remorse from any of the kids[.]" DCP 70. D.J. was permitted to plead guilty to the reduced charge of first degree criminal trespass. DCP 3. A disposition order entered July 24, 2014. DCP 13. Conditions were imposed, to include an apology letter and community

[3] DCP above 65 reflect an estimate of supplemental designations.

service. DCP 14. A notice of the administrative sealing hearing was attached to the disposition order, which provided:

> If the court determines you have not complied with the terms of your sentence, the court will not seal your record[.] If there is an objection to the sealing noted, the court will set a contested hearing. [] At the [] hearing the court will enter an order sealing your [] record unless it determines sealing is not appropriate. [] The court will not seal your file unless you have complied with all conditions of the disposition, to include payment of [] and restitution.

DCP 19. D.J. initialed that notice. DCP 20. He was represented by counsel at the time. DCP 18. The hearing was scheduled for March 25, 2016, by an order D.J. signed. DCP 13. An order on community supervision violation subsequently issued in response to his positive UA and truancy. DCP 23. Another violation for positive UAs, refusal to take a UA, truancy and failure to reside at home issued. DCP 71. Record sealing was denied at the administrative hearing for ineligibility attending his failure to complete community service or write an apology letter to his victims. CP31. As in E.C.'s case, the attorney who represented D.J. at the administrative hearing moved to revise the refusal to set a contested hearing without challenging the finding of condition noncompliance that made D.J.'s record ineligible for administrative sealing. DCP 33.

Both appellants' motions were heard by the Honorable Susan K. Serko May 3, 2016. RP(5/3) 3. Defense counsel conceded:

> [t]here is a distinction to be made between a case that's eligible for sealing and if somebody qualifies for sealing. I think the statute lays out times when a case is not eligible.

> Those would be a most serious offense, a sex offense, or felony drug case. Those are not eligible for sealing.

RP(5/3) 6. Counsel opined the statute required ineligibility for failure to comply with other conditions to be readdressed at a contested hearing. RP (5/3) 6-7, 16. It was argued a second hearing was necessary to notify respondents of outstanding conditions, without explaining why the notice they already received when their disposition orders were entered was not adequate. RP (5/3) 9-10. It was further asserted the second hearing would enable respondents to prove compliance without regard for hearings they could note for themselves whenever such proof actually exits. *Id.*

The trial court disagreed with defense counsel's contention RCW 13.50.260(1)(a) compels courts to automatically set a second hearing to readdress ineligibilities to sealing identified at the administrative hearing. RP(5/3) 17. It decided the administrative sealing hearing is where eligibility for administrative, often called automatic, sealing is determined. The (1)(a) contested hearings are to be reserved for deciding whether reasons beyond eligibility weigh against sealing records otherwise eligible for that relief. *Id.* RP(5/3) 17-18; ECP 58; DCP 54. Appellants timely appealed.

C. ARGUMENT.

1. THE TRIAL COURT RIGHTLY REFUSED TO SET REDUNDANT RCW 13.50.260 HEARINGS TO READDRESS APPELLANTS' CONCEDED FAILURE TO COMPLETE CONDITIONS OF JUVENILE DISPOSITIONS THAT MADE THEIR CASES INELIGIBLE FOR SEALING SINCE THE STATUTE RESERVES THE SECOND HEARING FOR DETERMINING IF CASES ELIGIBLE TO BE SEALED SHOULD REMAIN OPEN.

Our system of justice holds juveniles accountable for their crimes while fostering reintegration into society. ***State v. S.J.C.***, 183 Wn.2d 404, 421, 352 P.3d 749 (2015); RCW 10.40.010(2)(c). To strike the balance, punitive aspects of accountability must at times give way to rehabilitation. *See* ***State v. K.H.-H***, 185 Wn.2d 745, 754-56, 374 P.3d 1141 (2016). Still, there is a remedial aspect to accountability. For rehabilitation may be impossible without demonstrated acceptance of responsibility for the harm done. *Id.* Completion of court-ordered conditions is a step toward that end. *Id.* A step, which, if earnestly taken, can result in an improved character and uplifted outlook—two attributes that enhance a juvenile's likelihood of future success. *Id.* But reintegration without rehabilitation is a recipe for recidivism with all its attending hardships. *E.g.*, ***State v. Drum***, 168 Wn.2d 23, 32, 225 P.3d 237 (2010); ***Samson v. California,*** 547 U.S. 843, 854-55, 126 S. Ct. 2193 (2006).

"The requirement to pay full restitution as a condition precedent to obtaining an order to seal gives effect to the juvenile courts' rehabilitative purpose while maintaining public accountability and safety." ***State v. Hamedian***, 188 Wn.App. 560, 571, 354 P.3d 937 (2015). The same is true of conditions requiring juveniles to write apology letters to their victims or complete service hours owed to their communities. *See* RCW 13.50.260 (1)(a)-(c)(ii); ***K.H.-H.***, 185 Wn.2d at 756; ***State v. Martin***, 102 Wn.2d 300, 304-05, 684 P.2d 1290 (1984). As RCW 13.50.260 (1)(a) provides:

> The court shall hold regular sealing hearings. During these regular sealing hearings, the court shall administratively seal an individual's juvenile record ***pursuant to the requirements of this subsection*** ....

Id. (emphasis added). Among those *requirements*, is the individual:

> has completed the terms and conditions of disposition, including affirmative conditions and has paid the full amount of restitution owing to the individual victim named in the restitution order[.]

RCW 13.50.260 (1)(c)(ii). Once eligibility requirements for sealing are met, the court shall seal the record:

> [u]nless the court receives an objection to sealing or the court notes a compelling reason not to seal, in which case, the court shall set a contested hearing to be conducted on the record to address sealing.

RCW 13.50.260 (1)(a).

Appellants read this as obliging courts to burden brimming dockets by commanding (1)(c) ineligibilities to be readdressed in a second hearing

automatically set without a showing of changed circumstances. The trial court more rationally read the statute to create a two-part sealing process; wherein, the administrative hearing is limited to reviewing records for eligibility and contested hearings provide a forum for interested parties, like victims, to raise compelling reasons why records eligible for sealing should remain open. RP(5/3) 17-18; ECP 58; DCP 54. This accords with the statute's language, structure and placement in a legislative scheme aimed at accountability as well as rehabilitation.

Resolution of the dispute requires this Court to decide if contested hearings are to be meaningful proceedings where reasons to refrain from sealing eligible records are addressed. Or, as appellants maintain, will they be duplicative hearings where statutory ineligibilities must be readdressed to save ineligible offenders from having to note hearings once they have proof of eligibility to present? Interpretations of statute are reviewed *de novo*. ***State v. Sunich***, 76 Wn.App. 202, 206, 884 P.2d 1 (1994).

a. Plain meaning derived from the terms used by the statute in the context of its structure reserves the contested hearing for deciding whether there are reasons records eligible for sealing should remain open.

Plain meaning is discerned from ordinary usage, a statute's context and related provisions. ***State v. Jacobs***, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). Provisions in *pari materia* are read together. ***State v. Wright***, 84 Wn.2d 645, 650, 529 P.2d 453 (1974). Interpretations that lead to absurd

results will not be given effect. ***State v. Eaton***, 168 Wn.2d 476, 480, 229 P.3d 704 (2010); ***State v. J.P.***, 149 Wn.2d 444, 450, 69 P.3d 318 (2003); ***State v. Delgado***, 148 Wn.2d 723, 730, 63 P.3d 792 (2003); ***State v. Johnson***, 159 Wn.App. 766, 770, 247 P.3d 11 (2011).

Legislative intent for RCW 13.50.260(1)(a) appears when the two proceedings it creates under (1)(a) are considered within the context of the statute's design. Subpart (1)(a) begins by describing two hearings. The first is an administrative hearing where records that meet (1)(b)'s temporal qualification for administrative sealing must be addressed. Administrative sealing is made contingent on satisfaction of "requirements" provided in the subsection. This language incorporates those requirements into (1)(a) before the clause explaining when (1)(a) contested hearings are required. It is the first signal (1)(a) is not the standalone provision appellants' claim.

The second signal of (1)(a)'s dependence on provisions below it arrives in subpart (1)(b), which directs readers to an antecedent proceeding where (1)(a) administrative hearings are set:

> At the disposition hearing of a juvenile offender, the court shall schedule an administrative hearing to take place during the first regularly scheduled sealing hearing after the latest of the following events that apply: (i) The respondent's eighteenth birthday; (ii) Anticipated completion of a respondent's probation, if ordered; (iii) Anticipated release from confinement [] or the completion of parole, if the respondent is transferred to the juvenile rehabilitation administration.

(1)(b). Subpart (1)(c) returns the statute's focus to administrative hearings by providing the eligibility requirements for administrative sealing:

> A court shall enter a written order sealing an individual's juvenile court record *pursuant to this subsection* if:
>
> (i) One of the offenses for which the court has entered a disposition is not at the time of commission of the offense: (A) A most serious offense, as defined in RCW 9.94A.030; (B) A sex offense under chapter 9A.44 RCW; or (C) a drug offense, as defined in RCW 9.94A.030, and
>
> (ii) The respondent has completed the terms and conditions of disposition, including affirmative conditions and has paid the full amount of restitution owing to the individual victim named in the restitution order, excluding restitution owed to any insurance provider authorized under Title 48[].

(1)(c). There is no textual basis to treat (c)(i) ineligibility differently from (c)(ii) ineligibility. Each precludes administrative sealing if present.

Appellants seemed to agree a contested hearing is unnecessary to readdress (c)(i) ineligibilities since offense classification is static. RP (5/3) 6-9. They think contested hearings useful to readdress (c)(ii) ineligibility as it can change or be disproved. But subpart (c) provides no support for differentiating (c)(ii) ineligibility based on those qualities. If (1)(c) is over inclusive in this regard, it is for the Legislature to correct. That fact does not interfere with offenders securing sealing orders when they have proof of eligibility. They can adduce it at administrative hearings. They can move

for reconsideration or revision of rulings they think denied administrative sealing in error. They can appeal orders denying that relief. Still, appellants argue courts are compelled to set contested hearings even where they concede a correctly identified ineligibility will persist.

Part of appellants' error appears attributable to their failure to apply different meaning to different words. But the cannon against surplusage requires courts to avoid interpretations that render superfluous a provision of a statute, or words in a provision. ***In re Estate of Mower***, 193 Wn.App. 706, 720, 374 P.3d 180 (2016). Different words should be interpreted as intended for different effect. ***City of New Whatcom v. Roeder***, 22 Wash. 570, 580, 61 P. 767 (1900). Appellants read (1)(a)'s condition of failure to meet "requirements of this subsection" as synonymous with (1)(a)'s later condition of "compelling reason not to seal," in (1)(a)'s direction:

> [t]he court shall administratively seal an individual's juvenile record pursuant to the **requirements of this subsection** unless the court receives an objection to sealing or the court notes a **compelling reason not to seal**, in which case, the court shall set a contested hearing []

Id. (emphasis added). The statute reveals divergent intent for both terms, with the former focused on eligibility; and the latter, reasons to keep records open despite eligibility. This difference accords with Legislative intent while serving judicial economy by clearing already heavy dockets of duplicative proceedings. Recognition of the difference avoids a waste of

public resources as it clears the way for meaningful hearings vying for space on those dockets. "It would be a needless waste of the time and the energy of both the court and the litigants to continue [a] proceeding where it is made to appear [] there can be in the end but a single conclusion." ***Kimball v. Moor***, 18 Wn.2d 653 654, 140 P.2d 498 (1943); ***Chrobuck v. Snohomish Ct.***, 78 Wn.2d 858, 864-65, 480 P.2d 489 (1971); ***State v. Jefferson***, 79 Wn.2d 345, 349, 485 P.2d 77 (1971); ***King v. Olympic Pipeline Co.***, 104 Wn.App. 338, 365, 16 P.3d 45 (2001); ***State v. Kolocotronis***, 34 Wn.App. 613, 622, 663 P.2d 1360 (1983).

Courts must abide a constitutional statute's requirements. *E.g.* ***State v. Peltier***, 181 Wn.2d 290, 297, 332 P.3d 457 (2014); ***In re Pers. Restraint of Call***, 144 Wn.2d 315, 334, 28 P.3d 709 (2001). Their requirements cannot be countermanded however compelling the reasons may be. *See* ***Sedima v. Imrex Co., Inc.***, 473 U.S. 479, 496-500, 105 S.Ct. 3275 (1985); ***Duke v. Boyd***, 133 Wn.2d 80, 87, 942 351 (1977); ***Stroh Brewery Co. v. State Dep't of Revenue***, 104 Wn.App. 235, 239-40, 15 P.3d 692 (2001). For (1)(a)'s "compelling reason not to seal" to have independent meaning, the condition must refer to reasons beyond (1)(c) requirements. As they must be reasons courts have discretion to weigh.

More support for this reading appears in (1)(d), which provides the procedural steps that must be taken after a contested hearing:

> Following a contested sealing hearing on the record after an objection is made pursuant to (a) of this subsection, the court shall enter a written order sealing the juvenile record unless the court determines that sealing is not appropriate.

Id. Subpart (1)(d) makes sealing the presumptive outcome of contested hearings. Yet courts are prohibited from sealing records that fail (1)(a)'s requirements due to (1)(c) ineligibility. As only eligible cases could carry a presumption in favor of sealing, (1)(d) does not contemplate cases where (1)(c) eligibility is disputed. This reading is reinforced by the next part of (1)(d). It details *discretion* courts exercise to decide the *appropriateness* of sealing. As it is never *discretionary,* therefore *always inappropriate,* to seal records with (1)(c) ineligibilities, subpart (1)(d) does not provide for rulings on (1)(c) eligibility. Instead, (1)(d) assumes cases that progress to the contested hearings are eligible for sealing. The result is a forum where reasons not to seal are weighed against the presumption in favor of sealing that attends eligibility.

Appellants look to (1)(a)'s use of "objection" to support their claim the statute demands duplicative proceedings to readdress statutory bars to sealing. Quoting lay definitions of "objection," they argue prosecutors interpose objections that trigger (1)(a) contested hearings when they alert

courts to statutory bars courts could take notice of under ER 201. The profession's definition of "objection" is:

> A formal statement opposing something that has occurred, or is about to occur, in court and seeking the judge's immediate ruling on the point.

Blacks Law Dictionary 1102 (8th ed. 2004). It signifies advocacy. Yet prosecutors do not always act as advocates when they counsel courts on points of law material to matters of public importance under consideration. Particularly in administrative settings, it is common for prosecutors to act in a neutral-ministerial capacity consistent with their role as quasi-judicial officers presumed to impartially represent all people in the furtherance of justice. *See* ***State v. Case***, 49 Wn.2d 66, 70, 298 P.2d 500 (1956); ***Loveridge v. Schillberg***, 17 Wn.App. 96, 99, 561 P.2d 1107 (1977). Nothing entailed in sorting records according to (1)(c) requirements draws prosecutors into partisan opposition with the subject of those records. The task corresponds with a prosecutor's executive function of implementing legislative policy for criminal cases, which in this context means sealing eligible records. So prosecutors advance both the interests of the person whose record is being reviewed for administrative sealing as well as the public when they aid in the process. RCW 13.50.010 (2015 c 265; 2014 c 175); 260; ***State v. Rice***, 159 Wn.App. 545, 559-64, 246 P.3d 234 (2011).

There is another error in appellants' reasoning. As officers of the court, prosecutors owe a duty of candor to the court. RPC 3.3. Apprising courts of controlling authority is often part of that duty. RPC 3.3(1)(3). The duty is at its zenith when the authority is adverse to the prosecutor's position. Prosecutors with a preference for sealing should be quick to bring (1)(c) barriers to the court's attention. Raising (1)(c) may therefore prove an exercise of duty that interferes with a preferred outcome, making it the antithesis of an advocate's objection. Once an ineligibility is raised, prosecutors must candidly answer a court's questions about the applicable law. ***State v. Talley***, 134 Wn.2d 176, 183, 949 P.2d 358 (1998). It is not advocacy when this vital service is rendered to the judiciary. *Id.* at 185-87. So contrary to appellants' claim, prosecutors do not make (1)(a) objections by alerting courts to a record's failure to satisfy (1)(a) requirements for administrative sealing due to ineligibility under (1)(c).

Prosecutors transition from neutrals to advocates when reasons not to seal eligible records are perceived. For it triggers their responsibility to advance the interests of the public where they are in apparent conflict with those of an offender whose record is eligible to be sealed. *E.g.*, ***State v. Finch***, 137 Wn.2d 792, 810, 975 P.2d 967 (1999). To pursue the public's interests in this context, prosecutors make (1)(a) objections. Their reasons might include ensuring a recidivist's predicate offenses remain visible in

data bases used by law enforcement. Or they might be prompted by the prosecutor's awareness of probation or convictions in other cases. Subpart (1)(a) logically requires courts met with such objections to set contested hearings where the competing interests can be weighed.

Subpart (1)(a) links "objection" to the "compelling reason" term by making it one of two contingencies that trigger a court's duty to schedule contested hearings. Our doctrine of *noscitur a sociis* requires "objection" to be understood as relating to the same subject as the "compelling reason" term, for the meaning of words joined in one provision is controlled by the context created through their union. *See* ***State v. Flores***, 164 Wn.2d 1, 12, 186 P.3d 1038 (2008). The "compelling reason" term must mean reasons other than (1)(c) ineligibility for it to exceed surplusage. Harmonization of the term with "objection" occurs when they are construed to convey:

> Contested hearings are required when either the court receives an objection to sealing based on a compelling reason, *beyond eligibility*, or the court notes a compelling reason, *beyond eligibility*, not to seal.

The automatic victim notifications required by (1)(a) supports this construction. Sending (1)(a) notifications to them only makes sense if the contested hearing is a forum where courts can factor victim opposition to sealing into their rulings. *E.g.*, ***State v. MacDonald***, 183 Wn.2d 1, 18, 346 P.3d 748 (2015); ***State v. Devin***, 158 Wn.2d 157, 170-72, 142 P.3d 599

(2006); ***Seattle Times Co. v. Ishikawa***, 97 Wn.2d 30, 38, 640 P.2d 716 (1982). A Legislature constitutionally committed to sparing victims from avoidable hardships of judicial proceedings cannot be easily presumed to command that courts draw victims back into closed cases with automatic notice of hearings where prior rulings on ineligibility will be repeated.

So why hold duplicative (1)(a) proceedings? Appellants answer: *The statute requires contested hearings to be automatically set and victim notifications they trigger sent whether offenders have proof of eligibility to present or not.* This offender-centric reading counters the juvenile court's rehabilitative aim of socializing offenders with a sense of empathy for the people and community they harmed. Imposing upon victims, courts and prosecutors to prepare for automatically scheduled hearings where neither offenders nor their attorneys have anything to add, or incentive to attend, inflames more than abates selfish impulses that lead to recidivism.

The practice will inundate juvenile courts with futile proceedings that punctuate juvenile cases with a resoundingly antisocial of message—*you are more important than everyone else.* A message regressive to each case's rehabilitative purpose. Balanced against these many absurdities, is the ease with which offenders can schedule hearings to present proof of eligibility. A trivial task for people who will be adults before the need could

arise. Treating those adults like the children they were when their cases opened could not do them much good.

b. Construing (1)(a) to mandate duplicative proceedings to address (1)(c) ineligibilities is inconsistent with a statutory scheme that provides rational options to address them.

Courts derive meaning from provisions in *pari materia* and related statutes. They merge to reveal the intent of a Legislature presumed to be aware of the legal framework into which new law is enacted. ***Wright***, 84 Wn.2d at 650; ***Maziar v. Washington State Dep't of Corr.,*** 183 Wn.2d 84, 89, 349 P.3d 826 (2015). If statutory language is clear, its plain meaning is applied. ***Wingert v. Yellow Freight Sys.***, 146 Wn.2d 841, 852, 50 P.3d 256 (2002); ***Doe v. Church of Jesus Crist of Latter-Day Saints,*** 141 Wn.App. 407, 424, 167 P.3d 1193 (2007).

Confining (1)(a) contested hearings to deciding the propriety of sealing eligible records does not preclude those records from being sealed. It merely shifts decisions about eligibility to hearings where that issue is supposed to be addressed, *i.e.*, before administrative hearings, at them, or after them pursuant to RCW 13.50.260 subparts (3) and (4). Offenders can first address the feasibility of conditions at allocution before they are imposed. RCW 13.40.150 (1)-(5). While those convicted of (1)(c)(i) offenses cannot earn eligibility for administrative sealing, every offender

can avoid (1)(c)(ii) ineligibility by simply completing the conditions of their disposition orders prior to the administrative hearing.

Offenders unable to complete conditions can move to modify them before the administrative hearing. JuCR 7.14 (a)-(b); RCW 13.40.190, .200. E.C.'s ineligibility was failure to pay restitution. He could have moved for JuCR 7.14(b) modification[4] if it was burdensome. A hearing would have been set with "reasonable speed." JuCR 7.14 (e). The court could have reduced his obligation "for good cause." RCW 13.40.190(5); .200(4). D.J. might have obtained like relief from the apology letter and community service if circumstances left him unable to complete them. JuCR 7.14 (b); RCW 13.40.200 (2); ***State v. Cirkovich***, 42 Wn.App. 403, 405, 711 P.2d 374 (1985).

Appellants make no excuse for their failure to timely comply with the "terms and conditions" ordered by the court at disposition to receive the benefit of administrative sealing. They read (1)(a) as accommodating offenders who simply disregard court orders or commit crimes too serious for administrative sealing. Their reading of (1)(a)'s general provision violates the rule specific provisions control over general ones. *See* ***Anderson v. Dussault***, 181 Wn.2d 360, 371, 333 P.3d 395 (2014); ***Diaz v. State***, 175 Wn.2d, 470, 285 P.3d 873 (2012); ***Miller v. Sybouts***, 97 Wn.2d

[4] Restitution may also be relieved amid diversion agreements when juveniles reasonably satisfy courts of an inability to pay. RCW 13.40.080(5)(c), (16). This means of attaining relief also, rationally, places the burden on the juvenile to request it by motion. *Id.*

445, 448, 645 P.2d 1082 (1982). Subparts (3) and (4) provide for records ineligible for administrative sealing. Both rationally require offenders to proactively file motions if they want their records sealed instead of requiring courts to automatically set hearings for them whether they have proof of eligibility or not.

Under subpart (3):

> If a juvenile court record has not already been sealed pursuant to this section, [] the person who is the subject of the [record] may file a motion with the court to have the court vacate its order and findings, if any, and subject to RCW 13.50.050(13), order the sealing of the []record [].

RCW 13.50.260 (3). Subpart (4) permits courts to seal records of offenses ineligible for administrative sealing. Appellants' reading of (1)(a) turns these provisions into surplusage by subordinating their specific directions to (1)(a). The offender-initiated proceedings in subpart (3) and (4) better serve the Juvenile Justice Act by making offenders responsible for their success while enabling reintegration by rewarding diligence with a chance to move on with life unencumbered by juvenile cases. (6)(a).

2. THIS COURT SHOULD NOT DECIDE THE ISSUE OF APPELLATE COSTS UNTIL A BILL FOR COSTS IS SUBMITTED.

Review of appellate costs follows objection to a bill. RAP 14.4-14.5; ***State v. Sinclair***, 192 Wn.App. 380, 389-90, 367 P.3d 612 (2016); ***State v. Caver***, 195 Wn.App. 774, 784-86, 381 P.3d 191 (2016); ***State v. Nolan***, 141

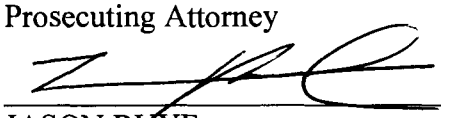
Wn.2d 620, 8 P.3d 300 (2000); ***State v. Blank***, 131 Wn.2d 230, 243-44, 930 P.2d 1213 (1997). Preemptive challenges to unfiled bills waste space far better allocated to the substantive or procedural issues presented by a case on appeal. *See* ER 201.

D. CONCLUSION.

Appellants received timely notice of their conditions and the date their records would be reviewed for administrative sealing. They make no apologies for failing to complete their conditions. To them, those failures are incidental, for they read RCW 13.50.260 as commanding courts to accommodate offenders who, by crimes or conduct, made their records ineligible for administrative sealing. They claim entitlement to a second hearing where even conceded ineligibilities must be readdressed. All the resources sacrificed to this absurdity are purportedly purposed to spare them the hardship of noting their own hearings when they have proof of eligibility to present. This cannot be what our Legislature intended.

RESPECTFULLY SUBMITTED: March 3, 2017.

MARK LINDQUIST
Pierce County
Prosecuting Attorney



JASON RUYF
Deputy Prosecuting Attorney
WSB # 38725

Certificate of Service:
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant ~~and appellant~~ c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

3-3-17 Theresa Kay
Date Signature

PIERCE COUNTY PROSECUTOR
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Case Name: State v. Cofield and Jeter

Court of Appeals Case Number: 49039-1

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ___

Answer/Reply to Motion: ___

■ Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ___
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Therese M Kahn - Email: tnichol@co.pierce.wa.us

A copy of this document has been emailed to the following addresses:

bretjacpd@gmail.com
ptiller@tillerlaw.com